

17 July 2023

ESMA Does Not Find Evidence to Ban Pre-Hedging but Warns on Risks

This Circular is being addressed to all market participants, particularly investment firms, credit institutions, proprietary traders, market makers, asset management companies and any other market participants, including trade associations and industry bodies, institutional and retail investors and academics, hereinafter referred to collectively as Stakeholders.

Background

The Authority would like to inform market participants that on the 12 July 2023, the European Securities and Market Authority ('ESMA'), published the [Final Report](#) on the feedback received to the [2022 Call for Evidence on pre-hedging](#) ('Call for Evidence').

As communicated by way of the Authority's circular dated 03 August 2022, the Call for Evidence had requested contributions from Stakeholders to obtain their views on pre-hedging and determine whether the practice should be admissible in the context of the Market Abuse Regulation ('MAR') and MiFID/MIFIR.

Feedback to the Call for Evidence

ESMA had originally addressed the practice of pre-hedging as part of the MAR review which took place between 2019 and 2020. Based on the feedback received at the time, it appeared that market participants had diverging views about the legitimacy of pre-hedging and on whether it is necessary for the market. More specifically, some respondents had considered pre-hedging to be a form of front-running, whereas other respondents considered it to be a regular market practice that is beneficial for clients and the market overall.

In view of the conflicting views, ESMA had not provided a final view on pre-hedging at the time; nevertheless, it committed to look further into the issue. In this respect, ESMA published a call for evidence on the subject in July 2022.

Based on the responses to the call for evidence, ESMA has concluded that overall pre-hedging is a voluntary market practice which might give rise to conflicts of interest or abusive behaviors. Whilst ESMA does not find any arguments to ban this practice at this stage, it also flags that these risks should be considered when issuing any future guidance.

ESMA has committed to providing guidance on pre-hedging in the [Final Report on the Market Abuse Regulation review](#).

Next Steps

ESMA will promote and contribute to the development of global regulatory principles applicable to pre-hedging. ESMA believes that such principles could be beneficial in fostering a common regulatory approach to this practice. Those principles could serve as a basis for the development of any future ESMA guidance.

Contact

Should you have any queries in relation to the above, kindly contact the Authority on pfma@mfsa.mt.